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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SANFORD WINSTON et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA DEPARTMENT OF FISH
AND GAME et al.,

Defendants and Respondents.

2d Civil No. B172929
(Super. Ct. No. CV020980)
(San Luis Obispo County)

Plaintiffs challenge emergency regulations closing the spot prawn trawl fishery. The trial court dismissed the complaint as moot because the regulations expired. Plaintiffs contend the trial court abused its discretion because the issues raised are of continuing public interest and likely to recur. We affirm.

FACTS

Stanford Winston and other spot prawn trawl fishermen (collectively Winston) filed a complaint for declaratory and injunctive relief seeking to overturn emergency regulations closing the spot prawn trawl fishery. The California Department of Fish and Game (Department) and the California Fish and Game Commission (Commission) were named defendants. Winston's complaint alleged as follows:

During a hearing on August 2, 2002, the Commission announced it would hold further hearings on the spot prawn trawl fishery and would not make a final

determination on whether to close the fishery until December of 2002. By mid-August, however, Winston became aware of Commission agenda item 17. Agenda item 17 stated in part: "Request of the Natural Resources Defense Counsel . . . for the Commission to consider taking emergency action to amend § 120.3, Title 14, CCR, to close spot prawn trawling."

On August 22, 2002, the Department sent a letter to the Commission stating that there should be an emergency closure of the spot prawn trawl fishery. The Department included with the letter a six-page statement of facts, "an informative digest . . . and backup data." No member of the public received a copy of the letter or the enclosures. Nor was the statement of facts and data upon which the Commission would base its decision disclosed to any member of the public at the hearing on August 30, 2002.

At the hearing, a Commissioner stated, "The study that we received from the Department is the study that this Commission asked for [¶] I'm satisfied that this fishery is dirty [*sic*] or at least it's too dirty given the Groundfish crises that we're in." Thereupon the Commission voted to enact emergency regulations to close the fishery.

The complaint alleged that the actions of the Department and Commission violated due process, equal protection and Fish and Game Code section 240.¹ The trial court issued a temporary restraining order against enforcement of the emergency regulations on the ground that Winston's claim of constitutionally inadequate notice potentially had merit.

The Department and Commission thereafter moved for judgment on the pleadings. The court granted the motion on the ground that Winston's action became moot when the regulations expired.

¹ All statutory references are to the Fish and Game Code unless otherwise stated.

DISCUSSION

Winston contends the trial court abused its discretion by dismissing his action as moot. He does not contest that the emergency regulations have expired. But he believes the trial court should have resolved the issues raised in the action because they involve a matter of continuing public interest and are likely to recur. (Citing *Liberty Mutual Ins. Co. v. Fales* (1973) 8 Cal.3d 712, 715-716.)

The issues Winston believes should be resolved are whether the Commission violated due process by giving inadequate notice of its intent to close the fishery, and whether it made the findings required by section 240 for an emergency regulation. But the exercise of the Commission's rule-making authority is quasi-legislative. (See *Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 586-587.) Procedural due process does not apply to such quasi-legislative hearings. (*Ibid.*) The procedural requirements for such hearings must stem from a particular statute. (*Ibid.*) Here Winston cites no statute requiring notice for the hearing.

Nor is there merit to Winston's argument that the Commission failed to make the findings required by section 240. Subdivision (a) of the section requires that the Commission make either of the following findings:

"(1) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

"(2) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare."

Here Winston's complaint alleges that the Commission had before it a six-page statement of facts and backup data sent to it by the Department. The administrative record contains a document entitled, "California Fish and Game Commission Statement of Proposed Emergency Regulatory Action." The document contains the findings required by section 240.

It is true the Commission did not formally adopt the findings made in its report. It is also true that it would have been better, had it done so. But it would be absurd to conclude that the Commission did not intend to adopt findings made in its own report that are necessary to support its decision. Under the circumstances, declaring the regulations void for lack of a formal adoption of findings would require placing form over substance.

The complaint raises no issues of continuing public interest. The trial court did not abuse its discretion in declaring the matter moot.

The judgment is affirmed. Costs are awarded to respondents.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Roger Picquet, Judge
Superior Court County of San Luis Obispo

Ilsan W. New for Plaintiffs and Appellants.

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